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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,629	05/15/2002	Henning Schumacher	BKS-0002	2956

7590

02/03/2004

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EXAMINER
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MCKANE, ELIZABETH L

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 02/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/913,629

Applicant(s)

SCHUMACHER, HENNING 

Examiner

Leigh McKane

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1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker et al (U.S. Patent No. 5,425,815) in view of Hall et al (U.S. Patent No. 5,547,990).

Parker et al teaches a method of cleaning and disinfecting endoscopes wherein the disinfectant used may be a quaternary ammonium compound. See col.1, lines 50-52. Parker et al is silent as to a particular quaternary ammonium compound to be employed. Hall et al evidences the use of quaternary ammonium compounds (such as decylisononyl dimethylammonium chloride) as disinfectants for hard surfaces and discloses that not only do they have "good (i.e., strong) microbial efficacy" (col.10, lines 34-36) but when combined with the imidazole amphoteric surfactants, also are less irritating "without a loss in cleaning ability or microbial efficiency" (col.1, lines 25-26). Therefore, it would have been obvious to one of ordinary skill in the art to employ the quaternary ammonium composition of Hall et al in the method of Parker et al.

With respect to the treatment temperature, Parker et al discloses that when using a detergent for cleaning, it may be heated to a temperature between 50 and 60 °C (col.4, lines 61-63). As Hall et al teaches that the quaternary ammonium compound itself acts as a cleaner, it would have been obvious to heat it for improved cleaning of the endoscope.

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3. Claims 1-5, 7, 8, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Connor et al (Abstract of "Disinfection of gastrointestinal fibrescopes – evaluation of the disinfectants Dettox and Gigasept").

O'Connor et al teaches the use of a quaternary ammonium compound to disinfect fibrescopes. Dettox is a proprietary composition and thus, the exact quaternary compound is unknown.

Hall et al evidences the use of quaternary ammonium compounds (such as decylisononyl dimethylammonium chloride) as disinfectants for hard surfaces and discloses that not only do they have "good (i.e., strong) microbial efficacy" (col.10, lines 34-36) but when combined with the imidazole amphoteric surfactants, also are less irritating "without a loss in cleaning ability or microbial efficiency" (col.1, lines 25-26). Therefore, it would have been obvious to one of ordinary skill in the art to employ the quaternary ammonium composition of Hall et al in the method of O'Connor et al, as one would have expected good results when making the substitution.

#### ***Response to Arguments***

4. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

5. Applicant's arguments filed 06 November 2003 have been fully considered but they are not persuasive.

Applicant argues that Hall et al teaches away from the present invention because "the

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reference teaches that a combination of quaternary ammonium compounds *plus* imidazoline compounds produces superior microbicidal activity as compared to the quaternary compound alone (*see* col.3, lines 1-3)." The Examiner respectfully disagrees with the assessment of the Hall et al reference. What col.3, lines 1-3 of Hall et al *actually* teach is "the cleaning efficiency of the combination is superior to the cleaning efficiency of the quaternary compound alone." Those of ordinary skill in the art know that cleaning efficiency and microbial activity are not the same.

Moreover, the claims do not, in any way, preclude the presence of the imidazoline surfactant, as all claims use "open" language.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Wednesday (7:15 am-4:45 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1275. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1700.

  
**Leigh McKane**  
**Primary Examiner**  
**Art Unit 1744**

elm  
26 January 2004